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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ABRAHAM BENITEZ BELTRAN, Defendant and Appellant.	G056851 (Super. Ct. No. 16CF2030) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lance Jensen, Judge. Affirmed.

Ronda G. Norris, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Michael R. Johnsen and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Abraham Beltran was convicted of four counts of child sexual abuse. On appeal, he does not challenge his underlying convictions for those crimes. However, he does contest the jury's finding he committed them during the course of a burglary, a finding that substantially increased his prison sentence. Although appellant was living at the victim's apartment as a guest at the time he molested her, and thus had permission to be at her residence, we conclude there is substantial evidence to support the jury's determination he committed burglary by entering her bedroom with the intent to commit the charged sex offenses. We also uphold the imposition of certain fines and fees appellant was ordered to pay as part of his sentence, even though the trial court did not ascertain his ability to pay those financial penalties. Accordingly, we affirm the judgment.

FACTS

In 2016, nine-year-old Maira O. was living with three siblings and her mother Rose in a one-bedroom apartment in Santa Ana. Appellant, a friend of Rose, also stayed at the apartment for a few months in the spring of that year. Rose allowed appellant to live at the apartment rent-free during that time because he was down on his luck and needed somewhere to stay. She expected him to leave as soon as he found another place to live.

The sleeping arrangement at the apartment was fairly stable. Appellant usually slept in the living room along with Rose and Maira's older brother, and Maira and her two younger siblings shared a bunk bed in the bedroom. However, that was not always the case. On a few occasions, appellant slept in the bedroom with Rose, and sometimes Maira and her siblings slept in the living room with their mother.

Over the course of appellant's stay, he molested Maira on multiple occasions. The first incident occurred in the living room, when he reached under Maira's clothing and touched her vagina. The other incidents all occurred in the bedroom. During the last one, Rose saw the light on in the bedroom in the early morning hours after

appellant returned to the apartment. When Rose got up to investigate, she saw appellant standing on a chair next to Maira's bed. He was touching Maira's vagina with his hand as she laid half-awake on the top bunk bed. Upon seeing Rose, appellant pulled his hand away from Maira and got off the chair. When Rose asked him what he was doing, he claimed he was simply trying to tell Maira he did not bring her the Cheetos he had promised her. He also said he was going to be moving out of the apartment the following day, which he did.

At trial, Maira testified appellant molested her 10-15 times over the course of his stay. Most of the incidents involved appellant touching her vagina and/or breasts, but one time he put his penis in her vagina. Maira denied that appellant ever slept in her bedroom, but in speaking with a social worker before trial, she said he sometimes slept on the floor in her room.

Rose testified she used the bedroom to store various household items (such as laundry detergent and toiletries) she sold to residents in her complex. She also said appellant helped her in this little side business from time to time. For example, if she was not home to assist a customer, appellant was allowed to go into the bedroom to get the requested item and handle the sale. Although Rose's customers were not allowed to enter the bedroom, she said the door to that room was always open.

A jury convicted appellant of committing three lewd acts against Maira and sexually penetrating her. (Pen. Code, §§ 288, subd. (a), 288.7, subd. (b).)[1] With regard to the lewd act counts, the jury found appellant committed them during the course of a first degree burglary for purposes of the One Strike law. (§ 667.61, subds. (a), (c)(8) & (d)(4).) In light of that finding, the trial court sentenced appellant to 25 years to life on each of those counts. The court ordered two of those sentences to be served

[1] All further statutory references are to the Penal Code.

consecutively, and it ordered sentence on the third count – as well as the 15-year-to-life term on the penetration count – to be served concurrently.

DISCUSSION

The Burglary Allegation

In finding the burglary allegation true, the jury determined appellant entered Maira's bedroom with the intent to touch her in a lewd manner. Appellant challenges that determination for lack of sufficient evidence. He also claims that, as Rose's guest, he had the right to enter the bedroom, and therefore could not burglarize that room. We find his arguments unavailing.

The legal framework for appellant's claims is set forth in *People v. Garcia* (2017) 17 Cal.App.5th 211 (*Garcia*). Like the defendant in that case, appellant was sentenced "under section 667.61, the so-called One Strike law. [Citation.] The One Strike law was '"enacted to ensure serious and dangerous sex offenders would receive lengthy prison sentences upon their first conviction."' [Citation.] 'Heightened sentences are intended when "the nature or method of the sex offense 'place[d] the victim in a position of *elevated vulnerability*.'"' [Citation.]" (*Garcia, supra,* 17 Cal.App.5th at p. 223.) This includes the situation where the defendant commits a lewd act upon a child "during the commission of a burglary of the first degree[.]" (§ 667.61, subd. (d)(4).)

"A person commits burglary when he or she 'enters any house [or] room . . . with intent to commit grand or petit larceny or any felony.' (§ 459.) 'Every burglary of an inhabited dwelling house . . . is burglary of the first degree.' [Citation.] '[S]ince burglary is a breach of the occupant's possessory rights, a person who enters a [house or room] with the intent to commit a felony is guilty of burglary . . . .' [Citation.] There are two exceptions, for persons who, first, have 'an unconditional possessory right to enter as the occupant of that structure' or, second, are 'invited in by the occupant who knows of and endorses the felonious intent.' [Citation.]" (*Garcia, supra,* 17 Cal.App.5th at p. 223.)

Appellant argues he did not commit burglary when he entered Maira's bedroom to sexually molest her because he had an unconditional possessory right to enter that room. In so arguing, appellant correctly notes that, as an invited guest of Maira's mother Rose, he had access to every room in the apartment, including Maira's bedroom. Indeed, the evidence revealed the door to Maira's bedroom was always open, appellant slept there sometimes, and he also entered the room on occasion to assist Rose in the business she ran out of the apartment.

However, as the *Garcia* case makes clear, those circumstances are insufficient to establish appellant had an *unconditional* possessory right to enter Maira's bedroom. In *Garcia*, the defendant sexually molested his niece while they were both staying as guests at the home of his sister-in-law. Because the molestation occurred in the bedroom where the defendant was staying, he argued he had an unconditional possessory right to enter the room, and therefore he could not have committed burglary for purposes of the One Strike law.

The *Garcia* court disagreed. While recognizing homeowners cannot burglarize their own home, the court said the rule is different for people who are only temporary visitors. It stated, "As an invitee, [the defendant] did not have an *unconditional* possessory right in [the] bedroom [he was staying in]; nor . . . did he have [his sister-in-law's] consent to enter her bedroom in order to commit a forcible lewd act against [the victim]. That is what is required to establish an exception to the burglary statute. (See, e.g., *In re Andrew I.* (1991) 230 Cal.App.3d 572, 579 . . . ['Permission to enter, whether express or implied, does not confer upon the entrant an unconditional possessory interest in the premises. These two concepts are not synonymous'].)" (*Garcia, supra*, 17 Cal.App.5th at p. 224.)

Given that the defendant in *Garcia* lacked an unconditional possessory right to enter the very bedroom where he was staying as a guest, appellant surely lacked such a right to enter Maira's bedroom. Although he had permission to enter Maira's

bedroom for a variety of reasons, he did not have an *unconditional* right to go into the room. And he certainly did not have Rose's consent to enter the bedroom for the purpose of molesting her daughter. In fact, until the time Rose caught appellant in the act, she had no idea he had been molesting Maira.

We recognize appellant does not fit the common perception of a burglar as someone who gains access to the victim's residence by stealth. But by taking advantage of the trust Rose placed in him by letting him stay at her apartment with her family, appellant proved himself every bit "as dangerous and as heinous as the burglar who intrudes by picking the lock or climbing in the window." (*Garcia, supra*, 17 Cal.App.5th at p. 214.) Therefore, his status as an invited guest to Rose's apartment did not preclude the jury's burglary finding. (*Id*. at p. 224; *People v. Abilez* (2007) 41 Cal.4th 472, 508–509 [even though a person may be legally entitled to enter the victim's house, as a guest or otherwise, he may be properly convicted of burglary for entering a room within the house to commit a felony]; *People v. Sparks* (2002) 28 Cal.4th 71, 78 [same]; *People v. Richardson* (2004) 117 Cal.App.4th 570 [same].)

Appellant also asserts there is insufficient evidence to prove he harbored the intent to molest Maira at the time he entered her bedroom. (See *Garcia, supra*, 17 Cal.App.5th at p. 226 ["the burglary statute requires that a defendant enter into a house or room *with the intent to commit a felony*."].) While there is no direct evidence of what appellant was thinking at the moment he entered Maira's bedroom on the occasions he molested her, Maira's testimony was enlightening as to that issue. In describing the various episodes during which appellant molested her in her bedroom, she said he just came into the room and started touching her. She did not say appellant came into the room for any other reason, nor, for that matter, did she say he actually did anything other than molest her while he was in her room. Therefore, the jury could reasonably conclude appellant entered the room with the intent to commit the charged sex offenses. Viewing the record in favor of the judgment below, as we are required to do (*People v. Olguin*

(1994) 31 Cal.App.4th 1355, 1382), there is substantial evidence to support the jury's finding appellant committed the charged lewd acts against Maira during the commission of a first degree burglary.

Fines and Fees

Relying on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), appellant contends the trial court violated his due process rights by ordering him to pay $70 in court-related fees for each conviction, plus a $300 restitution fine, without determining whether he had the ability to pay those financial penalties. (See §§ 1202.4, subd. (b)(1) [restitution fine], 1465.8, subd. (a)(1) [court operations fee], Gov. Code, § 70373 [court facilities fee].) Appellant claims we should remand the matter to permit the trial court to conduct an ability-to-pay hearing, and the Attorney General agrees. However, as explained below, we do not believe appellant is the type of offender the *Dueñas* opinion was designed to protect. We therefore uphold the trial court's order.

In *Dueñas*, the court ruled imposing financial penalties on a criminal defendant without a prior determination of ability to pay violates due process. While recognizing the state has a legitimate interest in imposing revenue-raising fees on people who break the law, the court stated, "Imposing unpayable fines on indigent defendants is not only unfair, it serves no rational purpose, fails to further [any] legislative [policy], and may be counterproductive." (*Dueñas, supra,* 30 Cal.App.5th at p. 1167.) Indeed, the court found the financial penalties at issue in that case did little more than punish the defendant for being poor and diminish her chances of successfully completing probation. (*Id*. at pp. 1166-1172.) Accordingly, *Dueñas* held, as a matter of first impression, trial courts must conduct an ability-to-pay hearing before imposing such penalties on criminal defendants. (*Ibid*.)

In *Dueñas*, however, the defendant was a poor, homeless woman who suffered an array of "cascading consequences" because she could not afford to pay various fines and fees that were leveled against her for committing minor offenses related

to her indigency. (*Dueñas, supra*, 30 Cal.App.5th at p. 1163.) Not only did she lose her driver's license, she was subjected to additional jail time and the prospect of civil collection efforts, all because she lacked the means to pay off her initial financial penalties. (*Id*. at pp. 1161-1164.) Given that her criminal history stemmed largely from the lack of monetary resources, the *Dueñas* court determined there was no rational basis for subjecting her to *additional* financial penalties in her current case, and therefore the trial court's decision to do so violated due process.[2]

While appellant is no stranger to the criminal justice system, there is nothing in the record suggesting his recidivism was attributable to any financial penalties he may have been ordered to pay in his prior cases. That is a key point of distinction from *Dueñas*, in which the financial penalties triggered by the defendant's initial crimes had severe consequences on her daily life and created the conditions that contributed to her current offense. (Compare *Dueñas, supra,* 30 Cal.App.5th at p. 1164, fn. 1 ["a cycle of repeated violations"] with *People v. Caceres, supra,* 39 Cal.App.5th at pp. 923, 928 [denying relief absent evidence the defendant's current offense was driven by, and likely to contribute to, her poverty such that she was trapped in a cycle of crime, debt and more crime] and *People v. Kopp, supra,* 38 Cal.App.5th at p. 95 [same].)

This case thus differs from *Dueñas* in that there was no evidence before the trial court indicating defendant was indigent. Therefore, we reject appellant's due process claim. We also note that, having been sentenced to a term of 50 years to life,

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[2] A number of courts have criticized the soundness of that ruling and rejected the very idea that due process is the appropriate measure by which the constitutionality of criminal fines and fees should be assessed. (See, e.g., *People v. Hicks* (2019) 40 Cal.App.5th 320 [*Dueñas* improperly expanded the boundaries of due process]; *People v. Aviles* (2019) 39 Cal.App.5th 1055, 1060 ["*Dueñas* was wrongly decided" and should have based its analysis on the Eighth Amendment's excessive fines clause instead of the due process clause]; *People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1034 (conc. opn. of Benke, J.) [same]; *People v. Caceres* (2019) 39 Cal.App.5th 917, 920 ["the due process analysis in *Dueñas* does not support its broad holding"]; *People v. Kopp* (2019) 38 Cal.App.5th 47, review granted Nov. 13, 2019, S257844 [same].) However, we need not weigh in on those issues, because even assuming the result in *Dueñas* was correct, appellant has not demonstrated the trial court violated his due process rights by failing to ascertain his ability to pay before ordering him to pay the financial penalties at issue in this case.

appellant will have plenty of time to pay off his financial penalties by working in prison. (See *People v. Jones* (2019) 36 Cal.App.5th 1028, 1035 ["Wages in California prisons currently range from $12 to $56 a month."].) Therefore, any error in failing to ascertain his ability to pay was harmless at worst. (*Ibid*.)

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.